



UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office

08/873,597 06/12/97

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APPLICATION NO.	FILING DATE	HM31 / FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
ROBIN M SILVA FLEHR HOHBACH TEST ALBRITTON & HERBERT FOUR EMBARCADERO CENTER SUITE 3400 SAN FRANCISCO CA 94111-4187		WHISENANT, E	
		1634	EXAMINER
		06/22/98	
		ART UNIT	PAPER NUMBER

DATE MAILED:  
*5*

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

<b>Office Action Summary</b>	Application No. <b>08/873,597</b>	Applicant(s) <b>Kayyem</b>
	Examiner <b>Ethan Whisenant</b>	Group Art Unit <b>1634</b>

- Responsive to communication(s) filed on \_\_\_\_\_.
- This action is FINAL.
- Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 1 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

#### Disposition of Claims

- Claim(s) 1-25 is/are pending in the application.
- Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- Claim(s) \_\_\_\_\_ is/are allowed.
- Claim(s) \_\_\_\_\_ is/are rejected.
- Claim(s) \_\_\_\_\_ is/are objected to.
- Claims 1-25 are subject to restriction or election requirement.

#### Application Papers

- See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.
- The specification is objected to by the Examiner.
- The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

- Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- All  Some\*  None of the CERTIFIED copies of the priority documents have been
- received.
- received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
- received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
- \*Certified copies not received: \_\_\_\_\_.
- Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

#### Attachment(s)

- Notice of References Cited, PTO-892
- Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- Interview Summary, PTO-413
- Notice of Draftsperson's Patent Drawing Review, PTO-948
- Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

**ELECTION/RESTRICTION**

- 1.** Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-18, drawn to a method of detecting a target sequence in a nucleic acid sample, classified in Class 435, subclass 5.
  - II. Claims 19-25, drawn to an apparatus for the detection of target nucleic acids in a test sample, Class 204, subclasses 193 and 403.
- 2.** Inventions I and II are related as an apparatus for practicing a method and a method. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case , the method recited in Claims 1-18 can be practiced by hand or by a materially different apparatus.
- 3.** Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
- 4.** A telephone call was made to Richard Trecartin at (415) 781-1989 on 11 JUN 98 to request an oral election to the above restriction requirement, but did not result in an election being made. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

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5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ethan Whisenant, PhD. whose telephone number is (703) 308-6567. The examiner can normally be reached Monday-Thursday from 7:00AM -5:30PM EST. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, W. Gary Jones, can be reached at (703) 308-1152.

The fax number for this Group is (703) 308-3014. Before faxing any papers please inform the examiner to avoid lost papers. Please note that the faxing of papers must conform with the Notice to Comply published in the Official Gazette, 1096 OG 30 (November 15, 1989). Any inquiry of a general nature or relating to the status of this application should be directed to the group receptionist whose telephone number is (703) 308-0196.

*ECW*

Ethan Whisenant, Ph.D.  
Patent Examiner

*W. GARY JONES*  
W. GARY JONES  
SUPERVISORY PATENT EXAMINER

*Ae1634*  
*6/22/98*